IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISON

Jose Doe, Plaintiff, vs. Jason T. Olson, Chief of Police, Minot Police Department; Sgt. Dave Goodman, in his individual and official capacities; Detective Thompson, in her individual and official capacities; Detective Jesse Smith, in his individual and official capacities; Criminal Investigation Bureau, and an Unknown Number of Unknown Federal (ICE) and City of Minot Agents of Law Enforcement, Defendants.	)	**ORDER DISMISSING DEFEDANTS AND DENYING MOTION TO APPOINT COUNSEL** Case No. 4:14-cv-119

Before the court are a "Response re § 1915(e)(2) to Show Liability of City of Minot Police, Chief of Police and State ND BCI in Conjunction to Individual Capacities" and a "Motion to Appoint Counsel and/or Assistance of Counsel" filed by plaintiff Jose Doe on December 17, 2014. For the reasons set forth below, plaintiff's claims against the Criminal Investigation Bureau, the Minot Police Department, and Jason T. Olson are dismissed without prejudice and plaintiff's motion to appoint counsel is denied without prejudice.

I. BACKGROUND

Plaintiff Jose Doe is proceeding *pro se* and *in forma pauperis*. The court previously screened his complaint pursuant to 28 U.S.C. § 1915(e)(2). In so doing, the court construed the complaint as including claims against (1) Jason T. Olson as Chief of Police of the Minot Police Department ("Olson"); (2) Sergeant Dave Goodman, in his individual and official capacities ("Goodman"); (3)

Detective Thompson, in her individual and official capacities ("Thompson"); (4) Detective Jesse Smith, in his individual and official capacities ("Smith"); (5) the North Dakota Bureau of Criminal Investigation ("BCI"); and (6) a number of unnamed defendants. On December 9, 2014, the court issued an "Order re § 1915(e)(2) Screening, for Service of Complaint, and to Show Cause," in which the court ordered the Clerk's Office to serve defendants Goodman, Thompson, and Smith, and further ordered that Doe's claims against defendants Olson and the BCI would be dismissed without prejudice unless plaintiff showed cause why they should not dismissed. On December 17, 2014, plaintiff filed his response to the court's order and the motion to appoint counsel now before the court.

II. RESPONSE TO § 1915(e)(2) SCREENING

A. Claims against the Minot Police Department and BCI

In the initial screening, the court construed Doe's complaint as including a stand-alone claim against the BCI but did not construe the complaint as including a stand-alone claim against the Minot Police Department. However, based on Doe's response and upon further review of the complaint, it appears that Doe may not have been attempting to assert a stand-alone claim against either entity. Rather, it appears that Doe may have merely identified the Minot Police Department as the employer of defendants Olson, Goodman, and Thompson and BCI as the employer of defendant Smith.

In any event, any claim against either BCI or the Minot Police Department is subject to dismissal. In the order screening the complaint, the court stated that Doe is barred from pursuing a § 1983 claim against BCI because BCI is a state agency immune from suit in federal court. In the portion of Doe's response under the heading "Claims against ND Bureau of Criminal Investigation," he cites authority holding that state officials may be subject to § 1983 liability and provides additional factual allegations related to Smith's conduct. Doe does not appear to directly challenge the court's conclusion that BCI is a state agency immune from § 1983 liability, nor does he cite any authority that would support subjecting BCI to such liability. Accordingly, any claims Doe has attempted to bring against BCI will be dismissed without prejudice.

Although the court did not previously address any claims Doe has attempted to bring against the Minot Police Department, the police department is not an entity subject to suit under § 1983. See, e.g, Ferrell v. Williams County Sheriffs Office, No. 4:14-cv-131, 2014 WL 6453601, at *2 (D.N.D. Nov. 4, 2014) (stating "it is well settled that municipal police departments, sheriff's offices, and jails are not generally considered persons within the meaning of 42 U.S.C. § 1983 and thus not amenable to suit" and citing authority). Accordingly, any claims Doe has attempted to bring against the Minot Police Department will be dismissed without prejudice.

B. Claims against Olson

In the initial screening, the court concluded Doe's claims against defendant Olson were subject to dismissal because Doe did not allege that Olson was directly involved in the actions that gave rise to his claims and because Doe's allegations were insufficient to state a claim against Olson for supervisory liability, for any other § 1983 violation, or under any other theory.

In Doe's response, he asserts his "complaint can clearly be interpreted and inferred to show a cause of action for failure to train and/or supervise." However, Doe does not include any factual allegations regarding Olson's conduct or provide any facts that would tend to show that Olson had notice that the Department's training procedures were inadequate and likely to result in a constitutional violation. See Tlamka v. Serrell, 244 F.3d 628, 635 (8th Cir. 2001) (a supervisor may be liable under § 1983 if "the supervisor was deliberately indifferent to or tacitly authorized the offending acts" which "requires a showing that the supervisor had notice that the training procedures and supervision were inadequate and likely to result in a constitutional violation").

Rather, Doe appears to assert that the alleged violation of his constitutional rights by the officers who actively participated in the investigation is sufficient to support a claim against Olson for failure to train or supervise. He states:

> This claim, among all of the other claims, stresses that suit against supervisory officials on the grounds that the officials failed to adequately supervise or train their employees. Defendants, Minot PD, did not have probable cause to obtain a search warrant for this particular Plaintiff, especially Plaintiff's personal property particularly personal computer laptop and safe. Defendants' grossly negligent and reckless indifference in illegal actions arose from their inadequate training from computer and electronic communication and caused their deliberate indifference and the lack of supervision by Chief of Police Minot PD. Defendants' incompetence from computer search and seizure was and is apparent from not obtaining a scintilla of evidence in linking computer porn to Plaintiff from their illegal 1st and 2nd search warrants on the day in question. Defendants' never had real objective probable cause in connection, here, to Plaintiff Doe and illegally searched laptop and broke home safe, grossly exceeding their search.

(Docket No. 15, p. 3) (errors and underlining in original).

Pro se pleadings must be liberally construed and held to a less stringent standard than would be required of an attorney. Erickson v. Pardus, 551 U.S. 89, 93 (2007). However, to state a cognizable claim, even a *pro se* litigant must meet the minimal requirements of Fed. R. Civ. P. 8(a)(2) by providing "a short and plain statement of the claim showing that the pleader is entitled to relief." Erickson, 551 U.S. at 93. This requires more than simply expressing a desire for relief and declaring an entitlement to it. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 & n.3 (2007). The pleading "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (quoting Bell Atlantic, 550 U.S. at 570). A pleading fails to meet this standard if it contains nothing more than "labels and conclusions," "a formulaic recitation of the elements of a cause of action," or "'naked assertion[s]' devoid of 'further factual enhancement.'" Ashcroft, 556 U.S. at 678 (2009) (quoting Bell Atlantic, 550 U.S. at 555, 557).

Even under the liberal standard that applies to *pro se* pleadings, Doe's allegations—which are essentially limited to a recitation of what is required to bring a supervisory liability claim and the allegation that the alleged violation of Doe's constitutional rights evinces a failure to supervise or train—are insufficient to state a claim for supervisory liability against defendant Olson. Further, Doe does not allege that he intended to proceed against Olson under any other theory. Accordingly, Doe's claims against Olson will be dismissed without prejudice.

III. MOTION TO APPOINT COUNSEL

Indigent civil litigants do not have a statutory or constitutional right to appointed counsel. Ward v. Smith, 721 F.3d 940, 942 (8th Cir. 2013). Pursuant to 28 U.S.C. § 1915(e)(1), a court "may request an attorney to represent any person unable to afford counsel." Among the factors the court should consider in deciding whether to appoint counsel are "the factual and legal complexity of the underlying issues, the existence of conflicting testimony, and the ability of the indigent plaintiff to investigate the facts and present his claims." Ward, 721 F.3d at 942. The court has "a good deal of discretion" in making the decision. Id. (quoting Chambers v. Pennycook, 641 F.3d 898, 909 (8th Cir. 2011)).

Doe asserts that appointment of counsel is appropriate because his case is "technical and complex" and he does not have a law license, does not know North Dakota laws, and cannot afford an attorney. Further, Doe appears to anticipate that the assistance of counsel will be required to conduct any necessary discovery due to what he characterizes as the Minot Police Department's "Code of Silence."

The court concludes that appointment of counsel is not warranted at this time. Doe's allegations relate to a relatively straight-forward claim that defendants violated his constitutional rights by subjecting him to an unreasonable search and seizure. Doe has demonstrated his ability to present the factual basis of his claims and to provide appropriate responses to the court's orders. Further, as defendants have yet to file a responsive pleading, any concerns regarding difficulties with discovery are premature. Accordingly, Doe's motion to appoint counsel will be denied without prejudice.

IV. ORDER

For the reasons stated above, the court **ORDERS**:

1. Plaintiff's claims against the Minot Police Department, Jason T. Olson, and the North Dakota Bureau of Criminal Investigation (Criminal Investigation Bureau) are **DISMISSED WITHOUT PREJUDICE**; and
2. Plaintiff's Motion to Appoint Counsel (Docket No. 14) is **DENIED WITHOUT PREJUDICE**.

Dated this 12th day of January, 2015.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr., Magistrate Judge
United States District Court